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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Frontier Petition for Limited Waiver Relief Upon Conversion of Global Valley Networks Inc. to Price Cap Regulation	)	WC Docket No. 07-_________

FRONTIER PETITION FOR LIMITED WAIVER RELIEF UPON CONVERSION OF GLOBAL VALLEY NETWORKS INC. TO PRICE CAP REGULATION

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On October 31, 2007, Citizens Communications Company, the parent of the Frontier and Citizens incumbent local exchange carriers ("Frontier")[1] completed its acquisition of Global Valley Networks Inc. ("Global Valley"). Because Frontier owns several price cap carriers, Section 61.41(a)(2) of the Commission's rules requires that Global Valley be converted to price cap regulation within one year of this acquisition. The current rules do not provide clear guidance for how such a conversion to price caps is made. Establishing a reasonable pathway for this conversion is in the public interest as it will, among other things: increase consumer welfare by enhancing competition; reduce the overall size of the universal service fund; hold steady or reduce access rates; and provide well established and tested regulatory incentives to encourage Global Valley to maintain and enhance efficient operations. This Petition sets forth

[1] Frontier is a mid-size holding company with incumbent local exchange carrier (ILEC) operations in 24 states. As an ILEC, Frontier operates in one of the most competitive (both residential and business) urban markets in the country (Rochester, NY), but the balance of its ILEC operations (including Global Valley's) are located in several small, high cost rural markets throughout the United States. In most of its ILEC markets, Frontier operates under federal price cap regulation, but operates under NECA Average Schedules in some of its rural markets. On an intrastate basis, Frontier mostly operates under a mix of traditional rate-base, rate-of-return regulation and alternative forms of regulation.

Frontier's proposal for the specific steps and methodology to convert Global Valley to price cap regulation. It also establishes a reasonable Average Traffic Sensitive target of $0.0095, the same target that applied to other rural ILECs when they converted to price cap regulation. The requested relief is a necessary interim step until the Commission establishes a pathway for conversion in its rules and while it contemplates comprehensive intercarrier compensation and universal service reform.[2]

In its recent Petition of Conversion to Price Cap Regulation and for Limited Waiver Relief,[3] Windstream Corporation ("Windstream") proposed a reasonable approach for conversion to price cap regulation that relied to the largest extent possible upon the framework already established in the *CALLS Order* ("CALLS plan" or "CALLS").[4] Frontier requests a process and waiver relief for Global Valley's conversion to price cap regulation similar to the relief requested by Windstream, and as a result, much of this Petition is similar to Windstream's.

I. FRONTIER PROPOSES A REASONABLE WAY TO CONVERT GLOBAL VALLEY TO PRICE CAP REGULATION UNDER THE CALLS FRAMEWORK.

Section 61.41(b)(2) of the Commission's rules unambiguously requires price cap incumbent local exchange carriers ("ILECs") that acquire ROR regulated ILECS to convert the

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2 *See, e.g., Developing a Unified Intercarrier Compensation Regime, Further Notice of Proposed Rulemaking*, 20 FCC Rcd 4685 (2005) (*"Intercarrier Compensation FNPRM"*); *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (*"Special Access NPRM"*); *Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Report and Order and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 4122 (2004) (*"Second MAG Further Notice"*); FCC Public Notice, *Federal-State Joint Board on Universal Service Seeks Comment on the Merits of Using Auctions to Determine High-Cost Universal Service Support*, 21 FCC Rcd 9292 (WCB 2006) (*"Reverse Auction PN"*).

3 *Comments Sought on Windstream Petition for Conversion to Price Cap Regulation and for Other Limited Waiver Relief*, DA 07-3718 (Aug. 23, 2007).

4 *Access Charge Reform; Price Cap Performance Review for Local Exchange Carriers*, Sixth Report and Order, 15 FCC Rcd 12962 (2000) (*"CALLS Order"*), aff'd in part, rev'd in part and remanded in part, Texas Office of Public Util. Counsel v. FCC, 265 F.3d 313 (5th Cir. 2001), *on remand*, 18 FCC Rcd 14976 (2003).

acquired ILECs to price cap regulation.[5] Nonetheless, the *CALLS Order*, which promulgated the existing regulatory framework for price cap carriers, does not leave a clear path for a carrier to convert to price cap regulation at this juncture. In fact, the Commission has suggested that CALLS is closed to new carriers.[6] The *CALLS Order* dockets remain open, however, and the Commission is considering related intercarrier pricing and universal service reform issues in a variety of proceedings.[7] Still, it is uncertain when, or whether, one or more of these dockets will clarify how acquired ROR carriers can implement price cap regulation.

Pending such clarification, this Petition establishes a reasonable path for Frontier to convert Global Valley to a form of price cap regulation that is consistent with the Commission's evolving price cap rules. Moreover, the path proposed in this Petition will not burden interstate access support ("IAS"), the explicit universal service support mechanism created in the *CALLS Order*.[8] In fact, this proposal would result in an overall reduction in the amount of universal service support Frontier receives and a corresponding reduction in the overall size of the high-cost fund.

Because the path to price cap regulation for a newly acquired ROR carrier remains unclear after the *CALLS Order*, Frontier proposes a reasonable approach to the conversion of Global Valley to price cap regulation that relies to the largest extent possible upon the existing CALLS framework. As part of the conversion, however, Frontier will need limited waivers of

5 47 C.F.R. § 61.41(b)(3) provides an exception for "average schedule" companies. Global Valley is not an average schedule company.

6 Second MAG Further Notice, 19 FCC Rcd at 4163-64.

7 *See, e.g., Intercarrier Compensation FNPRM; Special Access NPRM; Second MAG Further Notice; Reverse Auction PN.* The *CALLS* dockets are *Access Charge Reform*, CC Docket No. 96-262; *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1; *Low Volume Long Distance Users*, CC Docket No. 99-249; and *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45.

8 *See* CALLS Order, 15 FCC Rcd at 13039-63.

the CALLS price cap rules and the universal service support mechanisms to facilitate the conversion of Global Valley to a reasonable pricing regime adapted to a rural carrier converting to price cap regulation post-CALLS. The proposed waivers would provide interim relief until such time as the Commission clarifies in a rulemaking how a rural ROR carrier can convert to price cap regulation.

II. FRONTIER'S PRICE CAP REGULATION CONVERSION PROPOSAL

With the requested waivers, the main elements of the proposed pricing and universal service regime are as follows:

- **Price Cap Structural Rules:** As of the effective date, which should be no later than July 1, 2008, the proposed price cap regulatory structure that would apply to Global Valley would be based on the structural rules established in the *CALLS Order*, but Global Valley would not "join" the pricing and universal service support regime applied to price cap carriers in the *CALLS Order*.

- **Switched Access:** Because Global Valley currently participates in the NECA traffic sensitive and special access pools, it does not have rates based on its own cost. Frontier proposes to initialize Global Valley's switched access rates at a level designed to recover the authorized rate of return. It is anticipated that this will produce an average traffic sensitive ("ATS") rate higher than the "primarily rural price cap" carrier target under the *CALLS Order* of $0.0095 per minute. Frontier proposes to reduce Global Valley's ATS rate to that target level using the transition process contained in the existing rules.[9]

- **Special Access:** Frontier proposes to initialize Global Valley's price cap rates for special access at a level designed to recover the authorized rate of return. Because these rates will be targeted to the authorized rate of return, further reductions are not required by the current price cap rules and would unnecessarily penalize Global Valley.

- **Universal Service:** Conversion to price cap regulation would not be feasible without the continued availability of reasonable universal service support consistent with the CALLS plan. Frontier proposes that Global Valley continue to receive interstate common line support ("ICLS"), but the level of support will be calculated like IAS and set at a per line amount. Importantly, Global Valley's IAS-like funding will be less than the ICLS funding it would otherwise have received as a ROR carrier. Unlike ICLS support under

[9] *See* 47 C.F.R. 61.45.

ROR regulation, the IAS-like support Global Valley will receive for a given access line will be lost entirely when it loses a line.[10]

III. THE COMMISSION'S RULES REQUIRE GLOBAL VALLEY TO CONVERT FROM RATE-OF-RETURN TO PRICE CAP REGULATION.

A. The Commission's Rules Allow or Require Carriers To Convert From Rate-Of-Return To Price Cap Regulation, But Fail To Provide a Pathway To Do So.

The Commission's price cap rules, adopted in 1990, unambiguously permit an ILEC to elect price cap regulation and, in Frontier's case, require conversion of acquired companies to price cap regulation.[11] The subsequent *CALLS Order*, however, does not identify how a ROR carrier, or, more precisely, how ROR study areas, can be converted to price cap regulation. Significant elements of the CALLS scheme, such as the industry-wide initial $2.1 billion switched access rate reduction and the creation of the $650 million IAS fund, were based on the participation of all price cap ILECs as of June 30, 2000.[12] The *CALLS Order* does not expressly address a glide path for ILECs that might elect price cap regulation after that date.[13] Moreover, the pending *Second MAG Further Notice* tentatively found that the CALLS plan was not designed to be open to new ILECs or study areas.[14]

Even if CALLS is closed, however, the Commission's rules require price cap carriers to convert acquired rate of return carriers (other than average schedule companies) to price cap

[10] Alternatively, the Commission could increase the IAS target over the $650 million currently in the rules to accommodate Global Valley's participation in IAS.

[11] 47 C.F.R. § 61.41(a)(3), 47 C.F.R. §61.41(c)(2).

[12] *See CALLS Order*, 15 FCC Rcd at 12983-84; 47 C.F.R. § 54.801(a) (IAS fund for "areas served by price cap local exchange carriers as of June 30, 2000, is targeted to be $650 million per year"); 47 C.F.R. § 61.48(l)(1) (price cap ILECs required to achieve a total switched access rate reduction of $2.1 billion in their July 1, 2000 annual access tariff filings, relative to their June 30, 2000 rates).

[13] The *CALLS Order* notes that Valor and Iowa Telecom were under contract to acquire price cap properties "and will be subject [to] this Order." *CALLS Order*, 15 FCC Rcd at 13072 n.589.

[14] *Second MAG Further Notice*, 19 FCC Rcd at 4163-64.

regulation. Moreover, the Commission has never suggested that the price cap election provision, which remains in the Commission's rules, has been limited or modified.[15]

In Frontier's case, this issue can be remedied by allowing Global Valley to elect a form of price cap regulation utilizing the current post-CALLS price cap rate structure but revising one of the CALLS rate level components, through appropriate waiver relief, to accommodate Global Valley's unique circumstances.

B. The *CALLS Order* Reformed the Price Cap Rate Structure and Reduced Access Rates, and Establishes a Reasonable Basic Framework for Global Valley's Conversion.

The *CALLS Order* modified the existing price cap regulations -- while leaving the requirement to convert acquired companies to price cap regulation intact -- and referred to the modified rules as the "CALLS Proposal price cap rules."[16] The Commission's recent order dismissing a petition to reconsider the *CALLS Order* observed that those rules remain in effect.[17] Although the CALLS plan has reached the end of its original five-year term, it will continue in effect until it is replaced.[18]

The *CALLS Order* made the CALLS *rate structure rules* (*e.g.,* Subscriber Line Charge ("SLC") caps, elimination of the residential and single business line Presubscribed Interexchange Carrier Charge ("PICC"), and the separate special access price basket) mandatory for all price cap ILECs.[19] The Commission also required price cap ILECs to choose, within 60 days of release of the *CALLS Order*, whether to accept the CALLS *rate level components* or submit a

[15] 47 C.F.R. § 61.41(a)(3)

[16] *CALLS Order*, 15 FCC Rcd at 13025.

[17] *See Access Charge Reform*, CC Docket No. 96-262, DA 07-2968, at ¶ 2 n.8 (rel. Jul. 3, 2007).

[18] *Special Access NPRM*, 20 FCC Rcd at 1995.

[19] *CALLS Order*, 15 FCC Rcd at 12984.

forward-looking cost study for the reinitialization of rates.[20] The rate level components included each carrier's share of the industry-wide "up-front reduction" of $2.1 billion in switched access charges, the "X-factors" used to reduce rates, and the switched access usage rate "target" levels for different categories of carriers.

At this time, the CALLS 60-day option period, which was extended briefly, has long since passed.[21] Moreover, some of the CALLS rate level components could not be applied to Global Valley at this time in any event. For example, the most significant component, price cap carriers' up-front reduction in switched access rates in 2000, was partly achieved through reductions in carrier common line ("CCL") charges. Global Valley's CCL charges were eliminated in 2001 when the ICLS fund was established in the *MAG Order* to replace the support provided by CCL revenues.[22] The CALLS up-front reduction also was designed to total $2.1 billion for the entire industry, with each price cap carrier, including Frontier, absorbing its share.[23] With this reduction entirely implemented in 2000, neither the *CALLS Order* nor the price cap regulations require any similar "up-front" switched access rate reductions at a later time by a new price cap carrier.

IV. GLOBAL VALLEY'S INITIAL PRICE CAP RATES SHOULD BE BASED ON THE AUTHORIZED RATE-OF-RETURN

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[20] *Id.* at 12984-85.

[21] *Access Charge Reform*, 15 FCC Rcd 23435, 23437-38 (CCB 2000) (extending 60-day deadline from July 31, 2000 to September 14, 2000).

[22] *See Multi-Association Group (MAG) Plan for Regulation of Interstate Services of Non-Price Cap Incumbent Local Exchange Carriers and Interexchange Carriers*, Second Report and Order and Further Notice of Proposed Rulemaking, 16 FCC Rcd 19613, 19620, 19642, 19644-46 (2001) (*"MAG Order"*) (subsequent history omitted) (eliminating CCL charges and replacing CCL revenue with interstate common line support). *See Kreutz Declaration* at ¶ 9.

[23] *CALLS Order*, 15 FCC Rcd at 12983-84.

The X-factors established in the *CALLS Order* operated to reduce switched access usage rates to specified target levels and to reduce special access rates over a set period of time. Under the price cap rules, price caps were set at GDP-PI (a measure of the rate of inflation), minus the X-factor. Once switched access rates reached the targets, the CALLS switched access X-factor was adjusted to an inflation offset, effectively freezing switched access rates under the price cap rules. Similarly, on July 1, 2004, the special access X-factor was adjusted to an inflation offset, effectively freezing special access rates.[24]

A. Because Global Valley Will Still Be Part Of NECA In June 2008, Its Access Rates Should Be Initialized Based On The Authorized Rate Of Return Before Conversion To Price Cap Regulation.

Global Valley will still be a member of the NECA traffic-sensitive pool as of June 2008. Because Global Valley's rates have not been based on its own costs, Frontier proposes to initialize Global Valley's access rates based on the authorized ROR and then adapt them to the CALLS rate structure. Once Global Valley's standard monthly special access rates are initialized to meet the authorized ROR, they will fall in line with other CALLS company rates.

In the case of Global Valley's switched access rates, Frontier proposes a further reduction. Although Global Valley's initial switched access usage rate would result in an estimated ATS rate in the range of $0.01 to $0.0125 per minute, Frontier proposes to transition that rate further to the primarily rural price cap target of $0.0095 per minute. At that point, there will be no need for any further access charge reductions under the rationale of the *CALLS Order*.

B. No Further Reduction in Global Valley's Initial Rate-of-Return Based Special Access Rates Is Necessary or Required.

[24] *Id.* at 13019-21.

Because the *CALLS Order* froze price cap special access rates in 2004, Global Valley would not be required by the current price cap regulations to reduce its special access rates any further upon conversion to price cap regulation. Moreover, unlike most price cap carriers, Global Valley will start price cap regulation with special access rates set at a level required to produce the authorized rate of return. Any further reduction of these rates would be unnecessary.

C. Global Valley's Rate-Of-Return Switched Access Rates Are Being Reduced To An Optimum Level For A Rural Price Cap Carrier With Global Valley's Cost Characteristics.

Frontier proposes that Global Valley's initial switched access rates be developed to recover Global Valley's revenue requirement at the authorized rate of return. It is anticipated that Global Valley's initial switched access rates will produce an Average Traffic Sensitive rate in the range of $0.01 to $0.0125. The switched access X-factor under the CALLS plan was initially set at 6.5 percent, and was applied to ATS switched access rates until the ATS rate reached the target for each CALLS category of carrier. For primarily rural price cap ILECs (those with an average of less than 19 access lines subject to SLCs per square mile), the ATS target was set at $0.0095 per minute.[25] Overall, Frontier currently averages 17 switched access lines per square mile, company wide.

Because Global Valley's initial switched access rates at the authorized rate of return are expected to result in an ATS rate in excess of the $0.0095 target, Frontier proposes to transition those rates down to the $0.0095 target in compliance with the existing price cap rule. In order to implement this pro-consumer overall rate reduction, Frontier will need limited relief from the CALLS pricing rules.

[25] *CALLS Order*, 15 FCC Rcd at 13035.

D. Treatment of Global Valley as a Primarily Rural Price Cap Carrier Meeting the ATS Target Threshold of 19 Lines Per Square Mile Would Serve the Public Interest.

Frontier meets the requirement of Section 61.3(qq)(2) of the Commission's rules that a holding company must average less than 19 lines per square mile to qualify for the $0.0095 ATS target. However, Global Valley does not meet the requirement that its lines were owned by such a holding company as of July 1, 2000 or under a binding and executed contract to purchase as of April 1, 2000. The only reason Global Valley fails to qualify for the $0.0095 ATS target rate is this detail of timing. Because Global Valley's cost characteristics are such that rates at its authorized rate of return are expected to produce an ATS in excess of $0.0095, the public interest would be served by waiving Section 61.3(qq)(2) of the Commission's rules to allow Global Valley to have an ATS target of $0.0095.[26] Even with this relief, it is expected that the required reductions to the ATS target will produce rates that initially produce less than the authorized rate of return. Global Valley will need to make improvements in productivity simply to earn its authorized rate of return at the $0.0095 target level. A further reduction to the $0.0065 target which would apply absent the requested waiver presents a potentially insurmountable productivity hurdle.

1. Good Cause Exists For a Waiver Of Section 61.3(qq)(2) of the Commission's Rules To Allow Global Valley To Set the ATS Target at $0.0095 Per Minute.

Waiver of the Commission's rules is permitted upon a showing of "good cause."[27] Specifically, "[t]he FCC may exercise its discretion to waive a rule where particular facts would

[26] 47 C.F.R. § 61.3(qq)(2).

[27] *See* 47 C.F.R. § 1.3.

make strict compliance inconsistent with the public interest,"[28] or, alternatively, where "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[29] In determining whether to grant a waiver, the Commission may take into account special considerations of equity or "more effective implementation of overall policy" on an individual basis.[30]

In these circumstances, strict compliance with the 2000 ownership requirement would be inconsistent with the public interest and would undermine the policy goals of post-CALLS price cap regulation. Global Valley's density and related cost characteristics closely resemble Frontier's other properties that are subject to the $0.0095 ATS target. It is unlikely that Global Valley can achieve productivity improvement sufficient to earn its authorized rate of return at the $0.0065 ATS level. In establishing the "multi-tier target rate system" and a target ATS rate of $0.0095 per minute for primarily rural price cap carriers, the *CALLS Order* explained:

> Due to the nature of their service areas, primarily rural price cap LECs experience costs that are significantly higher than other price cap LECs of their size, and are unable to spread those costs over a large subscriber base. Therefore, we agree that the higher level is appropriate for primarily rural price cap LECs.[31]

The Commission specifically noted that "because VALOR and Citizens have fewer lines per square mile of service area than non-rural price cap LECs, their lines must run farther, and the cost of exchanges is distributed among fewer end users."[32]

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[28] *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*"Northeast Cellular"*); *Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, 7 FCC Rcd 4355, 4364 n.118 (1992) (subsequent history omitted) (*"Payphone Compensation"*).

[29] *Northeast Cellular*, 897 F.2d at 1166.

[30] *WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), cert. denied, 409 U.S. 1027 (1972) (*"WAIT Radio"*).

[31] *Id.* at 13036.

[32] *Id.* at 13036 n.389. Frontier is the same company referred to as "Citizens" in this statement.

Overall, Frontier (including the recently acquired Global Valley) typifies the "primarily rural price cap" LECs described in the *CALLS Order*.[33] All but one of Frontier's price cap study areas qualify as rural under the statutory definition of "rural telephone company," and over 80 percent of its company wide access lines are served by its rural operating companies.[34]

Under these circumstances Frontier submits that it would be manifestly unjust and unreasonable to start Global Valley at a target of $.0065. When price caps were instituted, carriers started at their authorized rates of return and moved down to $.0095. Carriers going into price cap regulation had to count on efficiency improvements to achieve and maintain an actual market-based rate of return. Global Valley could not expect to have any reasonable chance of earning a fair market-based return with a target of $.0065.

Because Global Valley's overall cost characteristics resemble those of a primarily rural price cap carrier, and because even the $0.0095 ATS target for low-density carriers is expected to produce rates that fail to recover Global Valley's authorized rate of return, "special circumstances warrant a deviation from the general rule and such a deviation will serve the public interest."[35] Global Valley's switched access rates after price cap conversion will be lower than the initial rates designed to recover Global Valley's authorized rate of return. A case could be made for a waiver of Section 61.3(qq)(2) for an ATS target equal to the level needed to recover Global Valley's authorized rate of return upon conversion, but Frontier believes that enough productivity improvements can be realized so that the $0.0095 ATS target will be

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[33] *CALLS Order*, 15 FCC Rcd at 13035-36.

[34] *See* 47 U.S.C. § 153(37).

[35] *Northeast Cellular*, 897 F.2d at 1166.

sufficient. Accordingly, waiver of the 2000 ownership date in Section 61.3(qq)(2) would provide for a "more effective implementation of overall policy"[36] and should be granted.

2. Only Limited Reductions In Global Valley's Switched Access Rates Are Required.

Once a primarily rural price cap carrier's ATS rates are reduced to its proper target level, CALLS requires no further reduction in those rates.[37] Frontier expects that Global Valley's initial switched access rates set at the authorized rate of return will be modestly higher than the $0.0095 ATS target rate. The initial ATS rates will be reduced using a transition process consistent with the ATS reductions implemented by the other CALLS companies, starting with the tariff filing to become effective July 1, 2008.

After a primarily rural price cap carrier's ATS rates were reduced to the target rate of $0.0095 per minute under CALLS, the switched access X-factor was then applied to its CCL charges until they were eliminated or until June 30, 2004, whichever was earlier.[38] At that point, the X-factor was set at GDP-PI, thereby effectively freezing switched access rates.[39] Rate of return carriers including Global Valley, however, have eliminated CCL charges. Moreover, the one-time $2.1 billion industry-wide switched access reduction was fully implemented in 2000. With the requested waiver, the current price cap rules accordingly do not require any further reduction in Global Valley's switched access rates in the converted study areas once its ATS rates all reach $0.0095 per minute or less.

Coupled with the reductions in ICLS funding under Frontier's requested universal service waiver relief explained herein, it would be especially unreasonable to require further reductions

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36 *WAIT Radio*, 418 F.2d at 1159.

37 *CALLS Order*, 15 FCC Rcd at 13022, 13029-30.

38 *Id.* at 13022.

39 *Id.*

in Global Valley's switched access rates below those reductions proposed above.[40] Because ICLS replaced ROR carriers' CCL revenue, the reduction in Global Valley's ICLS funding that will result from its conversion to price cap regulation and requested universal service waiver relief is equivalent to an additional reduction in its switched access charges.[41]

V. TARGETED PARTIAL RELIEF FROM CERTAIN UNIVERSAL SERVICE RULES WOULD SERVE THE PUBLIC INTEREST BY REDUCING GLOBAL VALLEY'S LEVEL OF SUPPORT.

The network expenditures required by Global Valley for continued provision of high quality service depend, in significant part, on continued high-cost support. Global Valley will require continued high-cost universal service fund ("USF") support, albeit at reduced levels, in order to realize all of the public interest benefits that will follow its conversion to price cap regulation. Moreover, the network upgrades that depend on USF support will enable Global Valley to continue its deployment of broadband services to rural consumers.[42] Finally, the Commission long ago recognized the need for explicit universal service to replace the implicit support that was originally part of interstate access charges.[43]

A. Frontier Seeks Partial Relief From Certain USF Rules So That Global Valley Will Receive Continued Support At A Lower Level.

Existing universal service rules allow Global Valley to receive high-cost universal service support to cover interstate access costs (*i.e.,* IAS) when it converts to price cap

[40] See Sec. V, infra.

[41] See *MAG Order*, 16 FCC Rcd at 19664-88 (eliminating CCL charges and replacing ROR carriers' CCL revenue with ICLS funding).

[42] Although broadband is not a supported service, the FCC has recognized that "the network is an integrated facility that may be used to provide both supported and non-supported services," and has committed itself to "ensuring that appropriate policies are in place to encourage the successful deployment of infrastructure capable of delivering advanced and high-speed services." *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090, 15095-96 (2003).

[43] *See, e.g., CALLS Order*, 15 FCC Rcd at 13043.

regulation[44]. *As a price cap carrier, under the Commission's rules, Global Valley would no* longer be eligible for ICLS.[45] The amount of IAS that Global Valley would receive after conversion to price caps is expected to be less than the amount of ICLS that it receives under rate of return regulation. Further, because the total amount of nationwide IAS is capped, the IAS received by Global Valley would be at the cost of reducing the IAS received by other carriers, including Frontier's other price cap properties. Accordingly, to secure the required high cost USF support that will assist Global Valley in its continued efforts to invest, upgrade and maintain its largely rural properties, Global Valley requests waiver relief in order to continue its support from the ICLS fund, although as a price cap carrier, in lieu of receiving IAS.

Frontier, however, requests only partial relief from the relevant USF rules in order that Global Valley receive *a level of support no higher than the IAS funding that Global Valley would receive per line* if IAS were available to it in 2007 and no higher in the future than that per line level. For administrative convenience and simplicity, Frontier proposes that the level of per line IAS support for 2007 be calculated only once and then carried forward until the CALLS plan is replaced as part of broader universal service and intercarrier compensation reform.

1. Frontier's Proposed Approach Would Further the Goals of Price Cap Regulation and the High-Cost USF Program.

Under the partial waiver relief proposed by Frontier, Global Valley would receive the same level of high-cost USF support for interstate access costs that any other price cap carrier would receive for 2007 in the same circumstances by virtue of its membership in CALLS, and no more than that level of support going forward. Global Valley would therefore have the same incentives as other price cap carriers, which are eligible for IAS, to become more efficient while

[44] *See* 47 C.F.R. §54.801(c). Exchanges purchased by a price cap carrier are incorporated into the nationwide IAS calculations with the next annual support recalculations.

[45] *See* 47 C.F.R. § 54.901(a) (ICLS is available only to ROR carriers).

investing in its network. Importantly, this approach will not burden the IAS fund, will reduce the level of support to Global Valley, and will reduce the overall size of the USF. Frontier seeks only a continuation of a portion of Global Valley's ICLS funding, to be calculated in the same manner as IAS. Those two high-cost funds would remain separate.[46]

Frontier's proposed approach to continued support at a lower level will have an overall beneficial effect on the high-cost program as a price-cap carrier. Over time, Global Valley would receive significantly less ICLS funding than it would if it had remained a ROR carrier. The savings to the USF program proposed in this Petition are an additional significant public interest benefit.[47]

2. Frontier's Request Is Consistent With Commission Precedent.

This request is consistent with Commission precedent granting partial waiver relief from USF and other rules and determining the level of the partial relief. In the *NECA USF Waiver Order*, for example, the Commission granted a partial waiver of Commission Rule 69.104(q), which provides that if a ROR carrier does not assess the maximum SLC on a line, it may not recover the foregone amount of SLC revenue from the ICLS fund.[48] The Commission partially waived the rule to allow ROR carriers to assess only five SLCs on the 24 channels in a T-1 circuit without foregoing ICLS funding for all 24 channels.[49]

Similarly, in granting partial relief from certain construction requirements in the *Intek Waiver Order*, the Wireless Bureau staff crafted a unique set of criteria for Intek that blended

[46] Global Valley's rural high cost loop support will be unaffected by its conversion to price caps or by this request. See 47 C.F.R. §§ 36.601 et seq. (high-cost loop support available to rural carriers).

[47] It should also be noted that, unlike IAS, ICLS is not capped, although a reduction in Global Valley's ICLS may result in a reduction in the ICLS per line received by a competitive eligible telecommunications carrier serving any of Global Valley's converted study area. *See* 47 C.F.R. § 54.901(b).

[48] *National Exchange Carrier Association Petition to Amend Section 69.104 of the Commission's Rules*, 19 FCC Rcd 13591, 13604-07 (2004) (*"NECA USF Waiver Order"*). See 47 C.F.R. § 69.104(q).

[49] *Id.*

criteria applicable to different categories of licenses.[50] These cases demonstrate that the Commission's waiver authority permits it to craft specific requirements in granting partial waiver relief to address a party's special circumstances.

3. Frontier Requests Partial Relief From Sections 54.901 and 54.903 of The Commission's Rules.

As described above, Commission Rule 54.901(a) makes ICLS "available" only "to a rate-of-return carrier."[51] Frontier seeks a partial waiver of that eligibility rule in order for Global Valley to qualify for ICLS as a price cap carrier. It seeks only a partial waiver so that the amount of support it receives equals the amount of IAS that it would have received in 2007 if it qualified for IAS for the converted lines in 2007. The measure of partial relief -- the amount of IAS it would have received in 2007 -- is analogous to the 19 SLCs that carriers were excused from assessing for every T-1 circuit, while still qualifying for ICLS for all 24 channels, in the *NECA USF Waiver Order*, or the *ad hoc* construction requirements created in the *Intek Waiver Order*.

To ensure that Global Valley's ICLS as of July 1, 2008 is calculated in the same manner as any other price cap carrier's IAS funding for 2007, Frontier also requests partial waiver relief from the remainder of the ICLS reporting and support calculation rules set forth in Sections 54.901, 54.902 and 54.903 of the Commission's rules.[52] Without a waiver of those rules, Global Valley's ICLS would continue to be calculated in the same manner it is now, rather than in the same manner as IAS. The IAS rules that govern the calculation of support for price cap carriers

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50 *Intek License Acquisition Corp.*, 16 FCC Rcd 16431 (WTB 2001) (*"Intek Waiver Order"*). See also Lojack Corp., 20 FCC Rcd 20497 (WTB 2005) (expanding scope of permitted uses of stolen vehicle recovery system operations through waiver).

51 47 C.F.R. § 54.901(a).

52 47 C.F.R. §§ 54.901-54.903. Frontier does not seek relief from the certification requirement in 47 C.F.R. § 54.904 applicable to recipients of ICLS. That provision does not affect the calculation of the amount of ICLS funding to be distributed.

should then be applied to Global Valley's ICLS to determine the amount of per line support that would have been appropriate for Global Valley in 2007 if it had been receiving IAS this year for the converted lines. Thus, in granting the partial relief requested, the Commission should require the Universal Service Administrative Company ("USAC") to calculate Global Valley's ICLS in the same manner as the other price cap carriers' IAS for 2007.[53]

4. Frontier Requests Partial Relief From Sections 54.801 through 54.806 of the Commission's Rules.

In conjunction with the requested waiver of Sections 54.901 and 54.903 discussed above, fairness dictates that Global Valley should not receive IAS if it is receiving ICLS. Frontier requests waiver of Sections 54.801 through 54.806 so that Global Valley may receive ICLS calculated in the same manner as IAS, rather than receiving IAS as set forth in these rules. This waiver is needed to prevent the introduction of Global Valley into price caps from harming other carriers that receive IAS, because IAS is capped at the national level.

In addition, throughout the IAS rules there is language that could be read to limit their application to the IAS fund, such as, *e.g.*, Section 54.802(d)(2) (USAC shall "[p]ublish the results of these calculations showing [IAS] Per Line available in each price cap [LEC] study area...."); Section 54.803(a) ("The zones used for determining [IAS] shall be ...."); Section 54.806(a) (USAC, "based on the calculations performed in ... 54.804 and 54.805, shall calculate the [IAS] for areas served by price cap [LECs] according to the following methodology....").[54] These phrases might be interpreted to preclude the application of the IAS rules to the calculation of Global Valley's ICLS funding. In order to ensure that Global Valley receives support

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[53] *See NECA USF Waiver Order*, 19 FCC Rcd at 13606 (requiring ROR carriers to calculate their line counts "in a manner consistent with this order" when filing line count data with NECA and USAC; the Commission did not separately waive the line count reporting rules to implement this instruction).

[54] 47 C.F.R. §§ 54.802(d)(2), 54.803(a), 54.806(a).

calculated in the same manner as IAS, Frontier requests a waiver of these and similar phrases in Sections 54.802 through 54.806 to the extent that they appear to limit the support being provided or calculated to IAS so that these rules can be applied to cover the ICLS provided to or calculated for Global Valley.[55]

B. The Public Interest Benefits From Global Valley's Conversion to Price Cap Regulation Justify Waiver of These Universal Service Rules.

Because Global Valley will experience a reduction in universal service support upon conversion to price caps, the total size of the Universal Service Fund will be reduced. The reduction of IAS available to other carriers as a consequence of the nationwide cap on IAS and the Global Valley conversion to price caps appears to be an unintended consequence of the rules. This reduction results in allocating some of the support from these carriers to Global Valley in order to maintain a cap on a portion of the Universal Service Fund (IAS) at the very time Global Valley's conversion to price caps would reduce another portion of the Universal Service Fund (ICLS) by a greater amount. The relief requested by Frontier will enable Global Valley to generate all of the public benefits resulting from its conversion to price cap regulation and to continue to invest in its network and provide high quality service, without reducing the amount of universal service support available to other carriers.

In light of Global Valley's need for continued partial ICLS funding in order to convert its study area to price cap regulation while holding other carriers harmless, partial waiver of the ICLS requirements in Sections 54.901, 54.902 and 54.903 of the Commission's rules, as well as a partial waiver of the IAS rules in Sections 54.802 through 54.806, "will serve the public interest" due to the efficiency and competitive benefits to be generated by Global Valley's

[55] As part of this request, Frontier does not seek a waiver of Section 54.801(a), which codifies the $650 million target on total IAS funding. In Section V.C. below, Frontier requests such a waiver in the alternative.

conversion.[56] Conversely, strict compliance with those rules, thereby reducing the amount of IAS support available to other carriers, would be "inconsistent with the public interest."[57]

This waiver would result in a "more effective implementation of overall policy."[58] Specifically, the requested partial waiver would enable Global Valley to receive high-cost support equivalent to that provided to price cap carriers under the mechanism established in the *CALLS Order*, alleviate at least some of the burden on the high-cost USF program, and to provide the competitive and consumer benefits of price cap regulation. Accordingly, Frontier has demonstrated good cause for a partial waiver of the universal service rules in order that Global Valley continue receiving ICLS funding as a price cap carrier but calculated in the same manner as IAS funding.

C. In the Alternative, Frontier Requests a Waiver of the IAS Target of $650 Million.

In the event that the Commission does not grant partial waiver relief enabling Global Valley to continue receiving ICLS funding as a price cap carrier, Frontier requests, in the alternative, a partial waiver of the $650 million target in Sections 54.801 and 54.806 of the Commission's rules so that it can receive the same amount of IAS funding it would have received as a price cap carrier for 2007 without affecting other price cap carriers' IAS funding. The good cause showing set forth above for continued ICLS funding justifies the same level of USF support from the IAS fund. Global Valley's conversion to price cap regulation, and the public interest benefits accruing therefrom, depend on continued USF support, whether out of the ICLS fund or IAS fund. Because the level of support would be exactly the same in either case,

[56] *Northeast Cellular*, 897 F.2d at 1166.

[57] *Id.*

[58] *WAIT Radio*, 418 F.2d at 1159.

the total impact on the high-cost program would be the same. Whether the source of funding is ICLS or IAS, Global Valley's total high-cost USF support will be less than it is now, which is another tangible public benefit from the requested relief.

In order to ensure the same public interest balance as the requested waiver of the ICLS rules, Frontier's alternative USF waiver request is framed to preclude any impact on other recipients of IAS funding. Thus, as part of this alternative request, in addition to a waiver of the $650 million target in Section 54.801(a) of the rules, Frontier also requests a waiver of the $650 million target insofar as it affects the calculation of IAS funding in Section 54.806 of the rules.[59] As in the case of the requested waiver of the ICLS rules, this alternative request also seeks only partial waiver relief, so that Global Valley receives only the amount of IAS funding going forward that it would have received in 2007 ("2007 Level") had it been a price cap carrier in 2007.

Accordingly, as an alternative to the partial waiver of the ICLS rules requested above, Frontier requests partial waiver of the IAS rules to make it possible for Global Valley to receive IAS funding at a 2007 Level without affecting other IAS recipients. Such partial waiver "will serve the public interest" due to the public benefits resulting from the conversion to price cap regulation facilitated by such waiver relief.[60]

VI. CONCLUSION

Conversion of Global Valley to price cap regulation under the terms proposed above will promote efficiency, encourage network investment and competition, and reduce its average switches access rates. Because the pricing and USF waiver relief requested will make it possible

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[59] 47 C.F.R. § 54.806.

[60] *Northeast Cellular*, 897 F.2d at 1166.

for Frontier to complete the price cap conversion of Global Valley while maintaining high quality service, this relief, and any other waiver relief the Commission may deem necessary, should be granted in order to generate the resulting substantial public benefits.

Respectfully submitted,

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Date: December 18, 2007

CERTIFICATE OF SERVICE

I do hereby certify that I have this 18th day of December, 2007 served the following parties to this action with a copy of the foregoing ***Frontier Petition For Limited Waiver Relief Upon Conversion of Global Valley Networks Inc. To Price Cap Regulation*** by hand delivery addressed to the parties listed below.

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